

DECISION



28905

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-213257.4; B-213257.5 DATE: July 24, 1984

MATTER OF: Cost Brothers, Inc., and Lori
Waterproofing, Inc.

DIGEST:

1. Where protester, which submitted bid on small business set-aside procurement, was determined by Small Business Administration (SBA) not to be a small business, but was interested party since it filed protest during SBA appeal period and would have been in line for award should the protest be sustained and SBA reverse its determination, may not have its request for reconsideration considered since SBA did not reverse its determination that protester was other than small. Thus, protester is no longer interested party.
2. Third low bidder whose protest was initially untimely, but whose protest was considered because (1) it raised the same issues as raised by the second low bidder whose protest was timely and (2) bidder was in line for award depending on outcome of protest and appeal of SBA's size determination on second low bidder, may not have request for reconsideration considered where second low bidder, which submitted protest on which GAO decision is based, is no longer interested party.

Cost Brothers, Inc. (Cost Brothers), and Lori Waterproofing, Inc. (Lori), request reconsideration of our decision in Cost Brothers, Inc., and Lori Waterproofing, Inc., B-213257.2; B-213257.3, Apr. 24, 1984, 84-1 C.P.D. ¶ 469, denying their protests against the Veterans Administration's (VA) acceptance of a bid submitted by Holbrook Waterproofing Company (Holbrook) in response to invitation for bids (IFB) No. 646-40-83-0, issued as a small business set-aside for construction work at the VA Medical Center, Pittsburgh, Pennsylvania.

029543

B-213257.4

2

B-213257.5

The request for reconsideration is dismissed.

Initially, Cost Brothers submitted a timely protest against VA's consideration of Holbrook's bid, basing its protest on the allegation that Holbrook's bid had been submitted late. While Lori's protest was filed on October 5, 1983, the record indicates that Lori knew, or should have known, the basis for its protest no later than September 1, 1983. Thus, Lori's protest was not filed within the 10-day period allowed by our bid protest procedures, 4 C.F.R. § 21.2(b)(2) and was, therefore, untimely. However, Lori's protest was not dismissed because it raised the same issues as Cost Brothers' protest. Under these circumstances we felt that it would serve no useful purpose to dismiss Lori's protest as untimely. However, since the SBA did not reverse its decision of September 29 that Cost Brothers was other than small, Cost Brothers is not eligible for award and, therefore, its request for reconsideration will not be considered. See Gibraltar Industries, Inc., B-212023, June 24, 1983, 83-2 C.P.D. ¶ 17 and, Tri-States Service Company, B-211862, Sept. 26, 1983, 83-2 C.P.D. ¶ 374. Since Cost Brothers, which filed the timely protest which was the basis for our consideration of this matter, is no longer an interested party, Lori's request for reconsideration will not be considered.

Accordingly, the request for reconsideration is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel